

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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In the Matter of)

Promotion of Competitive Networks in)
Local Telecommunications Markets)

WT Docket No. 99-217

Wireless Communications Association)
International, Inc. Petition for)
Rulemaking to Amend Section 1.4000 of)
The Commission's Rules to Preempt)
Restrictions on Subscriber Premises)
Reception or Transmission Antennas)
Designed To Provide Fixed Wireless Services)

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Cellular Telecommunications Industry)
Association Petition for Rule Making and)
Amendment of the Commission's Rules)
To Preempt State and Local Imposition of)
Discriminatory And/Or Excessive Taxes)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

COMMENTS OF MCLEODUSA INCORPORATED

McLeodUSA Incorporated, including its subsidiaries (McLeodUSA Telecommunications Services, Inc., Ovation Communications, Inc. and its subsidiaries, and Dakota Telecommunications Group, Inc. and its CLEC subsidiaries) (collectively "McLeodUSA") hereby submits its comments in the above-captioned proceeding. The essence of the comments is that the denial of access to willing customers in MDUs and MTEs by landlords is one of the single biggest regulatory obstacles to competitive providers such as McLeodUSA building out facilities to bring competitive telecommunications services to residential and business customers.

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McLeodUSA is one of the nation's fastest growing Integrated Communications Providers (ICP). McLeodUSA is a provider of integrated telecommunications services to residential and business customers in eleven Midwest and Rocky Mountain states. Current expansion efforts will bring competitive local services to ten additional states. McLeodUSA is a facilities-oriented communication provider with 16 switches, 8500 route miles of fiber optic network, and currently provides competitive local service to about 166,000 customers (including about 105,000 residential customers). McLeodUSA believes that it serves more residential customers than any other competitive provider in the U.S.

I. DENIAL OF ACCESS BY LANDLORDS IS A CRITICAL REGULATORY OBSTACLE TO FULL FACILITIES BUILD-OUT

Full facilities build-out is one of many platforms that McLeodUSA utilizes, in addition to unbundled network elements (UNEs) and resale. Cedar Rapids, Iowa is the site of McLeodUSA's largest full facilities build out program. McLeodUSA is building a state-of-the-art fiber optic network directly to our customer's premises in Cedar Rapids. As detailed in the attached Affidavit of Mr. Kent Van Metre, Director of Marketing for McLeodUSA's Cedar Rapids facilities-based operations, the primary obstacle to bringing full facilities based competitive service to our Cedar Rapids customers is the refusal of landlords of multi-dwelling units (MDUs) for residential, and multi-tenant environments (MTEs) for business, to allow access to their premises to provide services to their tenants, McLeodUSA's customers (see Affidavit of Kent J. Van Metre, attached). Such access should include access to rooftops, vertical and horizontal riser cables, utility closets and telephone equipment rooms and the cross-

connects therein. It should also include access to intra-building wiring between the cross-connect and the customer's premises, which this brief discusses separately in section II, below.

As set out by Mr. Van Metre, landlords of MDU's and MTE's prevent McLeodUSA from providing competitive telecommunication services to customers who wish such service from McLeodUSA by either charging exorbitantly high access-fees, or refusing to allow access to their premises altogether, often at the urging of the incumbent RBOC or incumbent CATV providers. In his affidavit, Mr. Van Metre lists nine MDUs where the tenants have requested service from McLeodUSA, and where McLeodUSA is ready, willing and able to provide such services, but was thwarted in doing so by denial of access by the landlord.

One third of U.S. residential units are located in MDUs (United States Census Bureau, Census of Housing, "Units in Structure," 1990.) Moreover, due to greater economies of scale, MDUs are likely to be among the first places that competitive providers seek to provide facilities based service. (This was the case for McLeodUSA in Cedar Rapids.) If this crucial first step in providing facilities based residential service is thwarted, the entire effort may fall. As this Commission has said, "[i]f only a limited class of consumers can be accessed by competitive facilities-based providers, then it is unlikely that competition will grow to this point where it will effectively eliminate the incumbent LEC's market power." Notice at ¶ 24. McLeodUSA is studying the economic results from its Cedar Rapids build-out to determine whether to launch future full-facilities based build-outs, or to utilize other platforms, such as UNEs. The failure to gain access to willing customers at MDUs and MTEs may be the single biggest factor impeding

the economic progress of the Cedar Rapids build-out, and is a major consideration in McLeodUSA's decision-making process about future facilities build-out activities.

II. ILECs MUST BE REQUIRED TO PLACE THE "D-MARK" AT THE MINIMUM POINT OF ENTRY

MDU and MTE owners and managers are not the only obstacle to the provision of competitive telecommunications services within MDUs and MTEs. Even if an MDU or MTE owner is willing to grant access to competitive telecommunications carriers, ILECs are able to delay CLEC entry or increase the costs thereof. This is because portions of the ILEC network often extend within MDUs and MTEs. The Commission can take several steps to solve this problem.

The simplest and most effective method of eliminating the ILEC's ability to restrict competitive entry is to require that the demarcation point in all multi-tenant buildings be located at the minimum point of entry ("MPOE") and to permit CLEC interface with the intra-building network at that point. This will ensure that all carriers - - incumbents and new entrants alike - - will interface with the building network at the same point. The uniform interface point at the MPOE will reduce the cost advantages of incumbency by making the costs of reaching a customer in the building more similar among carriers and will restrict the ability of ILECs to exert control in such a manner as to prevent competitive entry.

Barring location of the demarcation point at the MPOE, the Commission can require ILECs to make available as a network element on an unbundled basis pursuant to Section

251(c)(3) that portion of the ILEC network from the MDU entrance facility to the demarcation point, the so-called “last hundred yards.” Direct interface with Network Interface Devices (NIDs) must also be made available. For carriers that bring facilities up to the MDU, this will avoid the need to purchase an entire customer loop in order to reach the end user.

Finally, the Commission should adopt its tentative conclusion that Section 224’s requirement that utilities provide nondiscriminatory telecommunications carrier access to the conduit and rights-of-way owned or controlled by utility includes conduit and rights-of-way that exist within MDUs and MTEs. Notice at ¶¶ 40-45. In so doing, CLECs will be able to use the ILEC distribution network within MDUs and MTEs (that, often, were acquired as a benefit of incumbency) in order to serve customers therein.

CONCLUSION

For the foregoing reason, McLeodUSA respectfully urges the Commission to adopt rules that require MDU and MTE owners to provide nondiscriminatory telecommunications carrier access to consumers in MDUs and MTEs, and that restrict the ability of ILECs to delay or the cost of competitive entry.

Respectfully submitted
McLeodUSA

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Attorney for McLeodUSA

CC Docket No. 96-98

AFFIDAVIT OF KENT J. VAN METRE, DIRECTOR OF MARKETING FOR ADVANCED
TELECOMMUNICATIONS SERVICES, FOR MCLEODUSA

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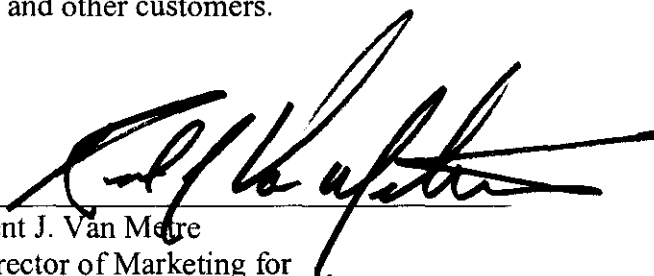
Kent J. Van Metre, being first duly sworn upon oath, deposes and states:

6. Even in situations where McLeodUSA has offered to overwire the building at no cost to gain access to the customer, McLeodUSA has often been denied such access by the landlord.

7. Examples of buildings, in Cedar Rapids, Iowa, mainly RESIDENTIAL multi-tenant environments are:


FACILITY	ADDRESS ("MTE's)	LINE COUNT
St. Lukes Apartments	1401 N Street	7
Asbury House	378 27th Ave	16
Mayfair	1606 Oakland Dr	12
HOUSES (Rental)	100 16th St	14
Chalet Apts.	220 19th St	24
Condos	100 Thompson	36
Condos	130 Thompson	36
1st Avenue Place	2115 Cottage Grove	191
Kelly Property Mgt.	(Various locations)	60

8. These problems concerning fair access to MTE's and MDU's are the most significant regulatory obstacle standing in the way of McLeodUSA providing competitive, full-facilities-based telecom service, to our residential and other customers.



Kent J. Van Meire
Director of Marketing for
McLeodUSA Advanced Telecommunication Services

Sworn to before me this 23 day of August, 1999



Mary J. Kesting
Notary Public